

AO 120 (Rev. 2/99)

TO: Mail Stop 8 Director of the U.S. Patent & Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK
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In Compliance with 35 § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been
 filed in the U.S. District Court Northern District of California on the following ☒ Patents or ☐ Trademarks:

DOCKET NO. CV 11-04689 SI	DATE FILED September 21, 2011	U.S. DISTRICT COURT 450 Golden Gate Avenue, San Francisco, Ca. 94102
PLAINTIFF PNY TECHNOLOGIES		DEFENDANT SANDISK CORP
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 5,719,808		***SEE ATTACHED COMPLAINT***
2 6,149,316		
3 6,436,893		
4 6,751,842		
5 6,763,424		

In the above—entitled case, the following patent(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading		
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK	
1 6,947,332			
2 7,137,011			
3			
4			
5			

In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT

CLERK Richard W. Wicking	(BY) DEPUTY CLERK  Yun-Jin Song	DATE September 22, 2011
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Copy 1—Upon initiation of action, mail this copy to Commissioner Copy 3—Upon termination of action, mail this copy to Commissioner
 Copy 2—Upon filing document adding patent(s), mail this copy to Commissioner Copy 4—Case file copy

1 44. There are high barriers to entry into the flash memory device and system markets
2 that would prevent new competition from entering for at least two years at a level sufficient to
3 deter or counteract SanDisk's exercise of market power. In order to develop a product that is a
4 viable alternative product to flash memory devices and systems that incorporate the technology
5 over which SanDisk claims patent protection and has monopoly power, a firm would have to
6 invest in significant research and development, make a product that could fit into end-use
7 products (e.g., the CF or USB form factors) without substantial modification to those products,
8 and find appropriate manufacturing, distribution, and sales facilities (including shelf space in
9 retail locations) to bring the new devices and systems to market.

10 45. Developing new technology in the flash memory technology field is extremely
11 expensive. Any new investment in this industry may cost billions of dollars. Even if another
12 company could invest only a fraction of what would be required to develop an alternative
13 technology, that research and development expense alone is likely to be a substantial barrier to
14 entry. Further, any new entrant would have to be able to manufacture its new technology on a
15 sufficient scale to keep its costs low enough to be competitive with flash memory devices and
16 systems.

17 46. For the same reasons, no close substitutes for flash memory devices and systems
18 exist. In addition to the cost of research and development, and achieving economies of scale,
19 possible alternatives are necessarily limited by the fact that flash memory devices and systems are
20 inherently designed for use in flash memory system products.

21 47. The relevant geographic market for flash memory devices is the United States
22 because, by definition, United States patents extend patent protection only to the geographic
23 United States.

24 *Flash Memory System Products Downstream Market*

25 48. The third downstream market is the flash memory system product market, which
26 includes the sale of USB drives, CF cards, and SSDs to U.S. consumers, typically through
27 retailers.

28 49. No close economic substitutes for these flash memory system products exist.

1 Although there are other portable technologies available for storing and transferring data, such as
2 CDs, DVDs, floppy disks, and external hard drives, none of these are close substitutes for flash
3 memory system products and are declining rapidly in market share. The small size, relative
4 durability, high storage capacity, and low cost of flash memory system products makes other
5 types of more expensive, bulkier, less durable memory products poor economic substitutes.

6 50. SanDisk has a monopolistic grip over the flash memory system products
7 downstream market. For example, upon information and belief, SanDisk-branded flash memory
8 system products accounted for more than 40% of retail sales of flash memory system products in
9 the United States in 2010. But, upon information and belief, SanDisk's share in the market for
10 these and other flash memory system products is even higher because SanDisk either sells
11 directly or collects a royalty on the purchase and sale of components (flash memory devices and
12 systems) by its licensed manufacturers to companies like PNY, and a second royalty for purchase
13 and sale of the same components from aggregators such as PNY who purchase and integrate the
14 components into flash memory system products that are eventually sold to consumers.
15 Accordingly, SanDisk's anticompetitive licensing scheme allows it to surreptitiously collect a
16 percentage of every sale made by its licensed manufacturers as well as a percentage of every sale
17 made by its competitors, in addition to the revenue it derives from SanDisk-branded flash
18 memory system products.

19 51. This effectively creates a situation where SanDisk is either receiving a royalty (and
20 sometimes a double or triple royalty) or direct sales revenue from each and every sale of a flash
21 memory system product to any individual or businesses in the world.

22 52. There are high barriers to entry to developing products that could be viable
23 competitive technologies to flash memory system products. For example, as previously
24 discussed, developing new technologies can cost billions of dollars. These barriers to entry would
25 prevent new competition from entering for at least two more years at a level sufficient to deter or
26 counteract SanDisk's exercise of market power.

27 53. The relevant geographic market for flash memory system products includes all
28 producers of flash memory system products that are available for sale in the United States,

1 because, upon information and belief, this is the geographic area within which U.S. consumers
2 can practicably turn for supply of flash memory system products.

3 54. As to all of the Relevant Markets described herein, SanDisk's acquisition,
4 maintenance, or extension of monopoly power or lessening of competition (or attempts to do so)
5 is not due to growth or development as a consequence of a superior product, business acumen,
6 historical accident, or a lawful patent grant, but rather is the direct consequence of SanDisk's
7 unlawful conduct.

8 **SanDisk's Anticompetitive Licensing Scheme**

9 ***The Patent Infringement Lawsuits***

10 55. SanDisk has filed several lawsuits and other proceedings relating to unfounded
11 accusations of patent infringement in an attempt to extort anticompetitive and uniform licenses
12 from its flash memory competitors.

13 56. On October 24, 2007, SanDisk filed two complaints against PNY and dozens of
14 other competitors in the Western District of Wisconsin. *SanDisk Corp. v. Phison Electronics*
15 *Corp. et al.*, Civil Action No. 07-cv-0605 (W.D. Wis.); *SanDisk Corp. v. Phison Electronics*
16 *Corp. et al.*, Civil Action No. 07-cv-0607 (W.D. Wis.) (collectively, the "Wisconsin Actions").
17 Kingston Technology Co., Inc. and Kingston Technology Corp. (collectively, "Kingston") are the
18 last remaining defendants in the Wisconsin Actions.

19 57. In the Wisconsin Actions collectively, SanDisk alleged that PNY infringed U.S.
20 Patent Nos. 5,719,808 (the "'808 Patent"), 6,149,316 (the "'316 Patent"), 6,426,893 (the "'893
21 Patent"), 6,757,842 (the "'842 Patent"), 6,763,424 (the "'424 Patent"), 6,947,332 (the "'332
22 Patent"), and 7,137,011 (the "'011 Patent").

23 58. Additionally, on December 6, 2007, and at the request of SanDisk, the United
24 States International Trade Commission initiated an investigation entitled *In the Matter of Certain*
25 *MLC Flash Memory Device Controllers, Drives, Memory Cards, and Media Players and*
26 *Products Containing Same*, Inv. No. 337-TA-619 against PNY, Kingston, and dozens of other
27 entities (the "ITC Investigation").

28 59. In the ITC Investigation SanDisk alleged that PNY infringed the '808, '893, '424,

1 '332, and '011 Patents.

2 60. On January 2, 2008, PNY settled the Wisconsin Actions and the ITC Investigation
3 by entering into a Limited Patent Cross License with SanDisk (the "License"). At the time, PNY
4 did not realize that SanDisk intended to, and had already begun to, execute its scheme to force
5 many of its competitors to enter into anticompetitive cross-licenses having uniform terms in an
6 effort to enhance barriers to entry and further monopolize the Relevant Markets.

7 61. On January 15, 2008, the Court entered a stipulation of dismissal of PNY, with
8 prejudice, in both the Wisconsin Actions. PNY also was dismissed from the ITC Investigation in
9 March 2008.

10 62. Many of the defendants/respondents in the Wisconsin Action and the ITC
11 Investigation similarly settled with SanDisk on what have turned out to be anticompetitive terms.
12 Upon information and belief, many, if not all, of the other defendants/respondents were forced to
13 enter licenses with the same or substantially the same substantive terms.

14 63. However, Kingston has not settled the Wisconsin Actions or the ITC Investigation
15 with SanDisk.

16 64. In fact, SanDisk brought an additional lawsuit against Kingston entitled *SanDisk*
17 *Corp. v. Kingston Technology Co., Inc. et al.*, Civil Action No. 10-cv-00243 (W.D. Wis.) (the
18 "Kingston Action").

19 65. In the Kingston Action, SanDisk alleged that Kingston infringed U.S. Patent Nos.
20 7,397,713 (the "'713 Patent"), 7,492,660 (the "'660 Patent"), 7,532,511 (the "'511 Patent"),
21 7,646,666 (the "'666 Patent"), and 7,657,702 (the "'702 Patent").

22 66. Upon information and belief, SanDisk would have brought a lawsuit against PNY
23 alleging infringement of the patents in the Kingston Action had PNY not entered into the License.

24 67. In the Kingston Action, Kingston has asserted counterclaims against SanDisk for,
25 *inter alia*, violation of federal antitrust laws. According to the November 15, 2010, opinion
26 issued by the Court in the Kingston Action, Kingston has adequately alleged that SanDisk has
27 "us[ed] its patents to coerce industry participants into licenses that raise costs, obstruct entry and
28 chill innovation" through a licensing program that "serves to maintain [SanDisk's] monopoly in

1 the market for the patented technology and threatens to give [SanDisk] monopoly power in
2 downstream product markets as well.”

3 68. SanDisk’s motion to dismiss Kingston’s antitrust counterclaims was denied and
4 the Court found that Kingston’s allegations “suffice to support an inference that [SanDisk]
5 exercises monopoly power in the flash memory technology market and threatens to obtain
6 monopoly power in the downstream markets using broad terms in its licensing program that are
7 anticompetitive and extend beyond the scope of the patent.”

8 69. The patents in the Wisconsin Actions, the ITC Investigation, and the Kingston
9 Action (collectively, the “SanDisk Patents”), and the allegations of infringement, all relate to
10 flash memory technology. Upon information and belief, SanDisk’s intent in bringing these
11 actions was to force many of its competitors to enter into the uniform cross-licenses described
12 herein in an effort to monopolize the market for flash memory. SanDisk did not, however, reveal
13 its intent to PNY at the time it entered into the License.

14 *The Uniform License*

15 70. In December 2007, PNY’s CEO Gadi Cohen met with SanDisk’s then-CEO, Eli
16 Harari, to discuss entering into a license to resolve patent infringement litigation filed by SanDisk
17 against PNY. Although competitors, Mr. Harari and Mr. Cohen had known each other for many
18 years and enjoyed a generally cordial relationship. Mr. Harari was anxious to lock PNY into the
19 License before the Consumer Electronics Show (CES) in January 2008. SanDisk’s plan was to
20 publicize and use the License with PNY (its largest competitor) as a model to pressure other
21 smaller competitors to enter into similar anticompetitive and uniform licenses. Mr. Harari asked
22 Mr. Cohen to do him a favor and sign the License. SanDisk and PNY entered into the License on
23 January 2, 2008, less than one week before the CES.

24 71. PNY was willing to enter into the License because at that time, 95% of PNY’s
25 flash-memory related purchases were of flash memory system products (i.e., finished end-user
26 products) sold by Toshiba and Samsung, each of which was a manufacturer licensed by SanDisk.
27 The license being proposed by SanDisk did not require PNY to pay any royalties for memory
28 system products (i.e., finished end-user products) purchased from a licensed SanDisk

1 manufacturer. Accordingly, the license was expected to have a minimal impact on PNY's
2 business and would end expensive patent infringement litigation brought by SanDisk against
3 PNY.

4 72. But as the markets changed and the availability of lower cost flash memory
5 devices and systems from other manufacturers grew, PNY changed its purchasing mix to de-
6 emphasize the purchase of flash memory system products, and instead focus on purchasing the
7 component parts to be assembled and resold by PNY as flash memory system products.

8 73. PNY changed its purchasing behavior because Toshiba's pricing on flash memory
9 system products was no longer competitive, and PNY determined that it could produce lower
10 cost, lower priced flash memory system products by purchasing and assembling the component
11 parts itself. But under the License, although PNY paid no royalties for memory system products
12 (i.e., end-user products) purchased from a licensed SanDisk manufacturer, a royalty was exacted
13 if PNY purchased the component parts and assembled them itself.

14 74. Upon information and belief, SanDisk and its licensed manufacturers, including
15 but not limited to Toshiba, Samsung, and others, conspired to increase or hold steady the price of
16 flash memory system products so as to cause competitors like PNY to purchase component parts
17 that would be subject to the anticompetitive and uniform licenses that SanDisk was coercing its
18 competitors to sign.

19 75. SanDisk's uniform licenses require competitors like PNY who purchase
20 component parts from an unlicensed manufacturer to pay SanDisk a very high royalty. By
21 contrast, if PNY purchases those same component parts from a manufacturer licensed by
22 SanDisk, the royalty PNY is required to pay to SanDisk under the uniform license is significantly
23 lower.

24 76. SanDisk's licensing scheme forces competitors like PNY to purchase the
25 component parts from manufacturers licensed by SanDisk at the lower royalty rate if they want to
26 be price-competitive in the Relevant Markets.

27 77. But the royalties paid to SanDisk by competitors like PNY who purchase
28 component parts from both licensed or unlicensed manufacturers are not the first or only royalties

1 that SanDisk receives on the sale of component parts. Upon information and belief, SanDisk has
2 also entered into licenses with its licensed manufacturers requiring that they pay SanDisk a
3 royalty for all flash memory system components sold by them to customers such as PNY.

4 78. SanDisk therefore receives double royalties on the sale of the same component
5 parts – one royalty from its licensed manufacturers on their sales of flash memory component
6 parts to competitors like PNY, and a second royalty from competitors like PNY for their sale of
7 the component parts in the Relevant Markets.

8 79. The double royalty that SanDisk requires violates the patent exhaustion doctrine,
9 which provides that the first authorized sale of a patented product in commerce exhausts the
10 patentee's patent protection as to that technology. The patent exhaustion doctrine prevents
11 SanDisk from collecting both (1) a "first" royalty on the sale by a licensed manufacturer to an
12 aggregator of a component part covered by a patent; and (2) a "second" royalty on the subsequent
13 resale of the same component part covered by the same patent that the aggregator has integrated
14 into a finished flash memory system product.

15 80. By forcing its multi-layered licensing scheme upon nearly all of its major
16 competitors, and with the assistance of its licensed manufactures, SanDisk has dominated the
17 Relevant Markets. SanDisk has (a) control over the prices at which the Relevant Products are
18 sold in the Relevant Markets; (b) control over its competitors' costs for the Relevant Products; (c)
19 stifled its competitors' ability to offer lower priced products in the Relevant Markets; and (d)
20 extended its patent coverage by requiring the payment of double royalties on the same
21 components covered by the same patents notwithstanding the exhaustion of its patent rights.

22 81. Upon information and belief, SanDisk has entered into several licenses in
23 settlement or avoidance of lawsuits relating to flash memory that are similar if not substantively
24 identical to the anticompetitive license SanDisk coerced PNY into executing.

25 82. In addition, upon information and belief, SanDisk entered into a license with
26 Buffalo, a large manufacturer of electronic devices that competes with SanDisk, that requires
27 Buffalo to exit one or more of the Relevant Markets.

28 83. SanDisk claims to control rights to patents necessary to manufacture and sell all

1 products that incorporate flash memory technology that are sold in the United States. Although
2 alternative designs exist that do not infringe some or all of SanDisk's patents, SanDisk has
3 repeatedly taken the position that any competitor manufacturing or selling products in the United
4 States containing flash memory technology must be practicing SanDisk's patents and thus should
5 pay royalties or face litigation. That is the position SanDisk has taken with PNY. Further,
6 SanDisk has insisted that the licenses imposed on PNY, and upon information and belief, on
7 several other industry participants, have several of the anticompetitive terms referenced herein.

8 ***SanDisk Uses a Portfolio License and Requires Licensees to Pay Worldwide Royalties, Despite***
9 ***Not Having Patent Rights in the Majority of Jurisdictions Around the World***

10 84. SanDisk's patent portfolio includes patents related to flash memory technology in
11 the United States and in a handful of foreign jurisdictions. However, SanDisk does not have such
12 patents in the majority of jurisdictions around the world.

13 85. Under the terms of SanDisk's licensing program, licensees must pay a royalty on
14 all flash memory-related products sold worldwide, including flash memory-related products sold
15 in those jurisdictions in which SanDisk does not possess patent rights. The practical effect of this
16 licensing scheme is that any company seeking to sell in the United States market must pay
17 royalties to SanDisk on its worldwide sales of any flash memory-related products.

18 86. In addition, SanDisk's licensing terms include "cross-licensing" of a large
19 portfolio of patents (rather than individual patents) and require licensees to pay royalties for sales
20 that would not otherwise be covered by SanDisk's patents. Licensees must pay royalties on the
21 sales price of a flash memory device, system, or product, regardless of whether the device,
22 system, or product practices SanDisk's patents.

23 87. Patent rights in each jurisdiction in which those rights are granted constitute
24 separate relevant products because they are not economic substitutes. A patent right gives the
25 holder of that patent the exclusive right to use (or to decide who can use through licensing) a
26 specific technology for a specified amount of time in the jurisdiction that issued the patent and
27 does not provide any rights to the patent holder outside the granting jurisdiction. In the
28 jurisdictions in which SanDisk does not have patents related to flash memory technology, it does

not have any right to claim any royalty from PNY at all.

88. SanDisk's licensing scheme increases costs to its competitors by requiring them to pay royalties on all worldwide sales. The higher costs are passed on to consumers of flash memory system products in the form of increased retail prices.

89. SanDisk's licensing scheme has no pro-competitive justification, but rather only harms competition and consumers.

***SanDisk Requires Licensees to Cross-License Their
Future Innovations on a Worldwide Royalty-Free Basis***

90. SanDisk also requires licensees to grant back a cross-license covering any new technology developed by the licensee on technology within the scope of the portfolio license on a worldwide, royalty-free basis. Thus, even if a licensee develops or obtains access to an alternative technology that it could use to practice fewer or none of SanDisk's patents, the licensee would still be required to pay a royalty to SanDisk on any sales of the new product and SanDisk would have the right to use the new technology on a worldwide, royalty-free basis.

SanDisk Requires Licensees to Pay Double or Triple Royalties

91. As discussed herein, a flash memory system is comprised of a flash memory device, controller, and other component parts. A flash memory device by itself has no economic value to an end user. The economic value of a flash memory device is necessarily related to and dependent upon its incorporation into a flash memory system, which is then incorporated into a flash memory system product. SanDisk is entitled to receive a royalty for the purchase and use of a flash memory device in a system and/or product only once.

92. SanDisk's licensing scheme requires that royalties be paid both on the sale of a flash memory device and the subsequent sales of a flash memory system and/or a flash memory system product incorporating the same device in every instance.

93. SanDisk's uniform licenses require competitors like PNY who purchase component parts from an unlicensed manufacturer to pay SanDisk a very high royalty. By contrast, if PNY purchases those same component parts from a manufacturer licensed by SanDisk, the royalty PNY is required to pay to SanDisk under the uniform license is significantly

1 lower.

2 94. But the royalties paid to SanDisk by competitors like PNY who purchase
3 component parts from both licensed or unlicensed manufacturers are not the first or only royalties
4 that SanDisk receives on the sale of component parts. Upon information and belief, SanDisk has
5 also entered into licenses with its licensed manufacturers requiring that they pay SanDisk a
6 royalty for all flash memory system components sold by them to customers such as PNY.

7 95. SanDisk therefore receives double royalties on the sale of the same component
8 parts – one royalty from its licensed manufacturers on their sales of flash memory component
9 parts to competitors like PNY, and a second royalty from competitors like PNY for their sale of
10 the component parts in the Relevant Markets.

11 96. Requiring double royalties violates the doctrine of patent exhaustion and is an
12 abuse of market power with the intended purpose and effect of raising the costs to SanDisk's
13 competitors of manufacturing and selling the Relevant Products in the Relevant Markets.

14 97. Through this multi-layered licensing scheme, SanDisk has acquired, maintained,
15 enhanced, and abused its market power by extracting multiple royalties from any company that
16 sells any of the Relevant Products in any of the Relevant Markets, thereby controlling the price at
17 which the Relevant Products are sold in each of the Relevant Markets, including the price at
18 which flash memory system products are sold to consumers.

19 98. Through its anticompetitive licensing scheme, SanDisk is using its market power
20 to ensure that it and its licensed manufacturers have a permanent cost advantage over competitors
21 like PNY, who are forced to pay a discriminatory and exorbitant royalty if they decide to self-
22 manufacture or purchase any of the Relevant Products from an unlicensed manufacturer.

23 99. The immediate result of this anticompetitive licensing scheme is that SanDisk has
24 used its market power to force increases in the costs of manufacturing and selling flash memory
25 devices, systems, and products by raising the costs of its competitors and diminishing their ability
26 to compete on price in the sale of flash memory devices, systems, and products in the United
27 States. SanDisk's anticompetitive licensing scheme excludes certain competitors from selling in
28 the United States, and controls prices on those sales that do occur through the licensing scheme.

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17 UNITED STATES DISTRICT COURT
18 NORTHERN DISTRICT OF CALIFORNIA

19
20
21 PNY TECHNOLOGIES, INC.,

22 Plaintiff,

23 v.

24 SANDISK CORPORATION,

25 Defendant.

Case No. _____

COMPLAINT FOR ANTITRUST
VIOLATIONS; TORTIOUS
INTERFERENCE; AND UNFAIR
COMPETITION

DEMAND FOR JURY TRIAL

E-filing

CV

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SI

1 ***SanDisk's Illegal Licensing Scheme Harms Competition and Consumers***

2 100. As detailed herein, SanDisk's licensing scheme directly and indirectly increases
3 the costs paid by its rivals in each of the Relevant Markets in which it competes.

4 101. The higher costs resulting from SanDisk's anticompetitive licensing scheme are
5 passed on to consumers of flash memory systems and flash memory system products in the form
6 of increased retail prices. The cost of a product containing a flash memory device is highly
7 dependent on the flash memory capacity in the particular product. Accordingly, prices of flash
8 memory systems products containing flash devices are increased as a result of SanDisk's abusive
9 and anticompetitive royalty scheme as it operates in each of the Relevant Markets. This is
10 particularly true for prices of USB flash drives.

11 102. Not only are the higher device, systems, and systems product prices passed on to
12 consumers, but consumers of the same are and will continue to be harmed by fewer competitors
13 making and distributing the Relevant Products in the United States. By abusively raising its
14 rivals' costs, SanDisk's licensing scheme will have (and already has had) the result of eliminating
15 SanDisk's rivals and reducing competition in each of the Relevant Markets.

16 103. Upon information and belief, several competitors, including Buffalo, a large
17 manufacturer of electronic devices, have exited or significantly reduced their presence in one or
18 more of the Relevant Markets as a result of SanDisk's anticompetitive licensing scheme.

19 104. Unless SanDisk's licensing scheme is enjoined, this reduction in competition will
20 continue, resulting in higher prices, reduced output, less choice, and reduced innovation for flash
21 memory system products in the United States to the detriment of U.S. consumers of these
22 products.

23 105. This harm directly and significantly affects interstate commerce in the United
24 States.

25 **The SanDisk Lawsuit**

26 106. On July 26, 2011, SanDisk filed a lawsuit in the Superior Court of the State of
27 California for the County of Santa Clara, entitled *SanDisk Corporation v. PNY Technologies, Inc.*
28 *f/k/a P.N.Y. Electronics, Inc.*, Case No. 1-11-CV-205928 (the "SanDisk Lawsuit"), alleging the

1 PNY breached the License by not paying royalties.

2 107. SanDisk filed the SanDisk Lawsuit without first following the alternative dispute
3 resolution provision set forth in the License.

4 108. Following the License's alternative dispute resolution provision was a condition
5 precedent to SanDisk's filing of its Lawsuit.

6 109. The court in which SanDisk filed the SanDisk Lawsuit does not have subject
7 matter jurisdiction over the case under 28 U.S.C. § 1338(a), which was amended with the
8 enactment of the Leahy-Smith America Invents Act on September 16, 2011, to state, "No State
9 court shall have jurisdiction over any claim for relief arising under any Act of Congress relating
10 to patents" PNY brings this more complete action to address all of the disputes between the
11 parties relating to the License.

12 110. SanDisk's actions in filing the SanDisk Lawsuit in violation of the terms of its
13 own License illustrate how unfairly SanDisk treats its competitors in this field.

14 **COUNT I**

15 **(Sherman Act § 2: Monopolization)**

16 111. PNY repeats and incorporates by reference the allegations set forth in Paragraphs 1
17 through 110 as if fully set forth herein.

18 112. Section 2 of the Sherman Act (15 U.S.C. § 2) prohibits, *inter alia*, the willful
19 monopolization of any part of the trade or commerce among the States.

20 113. As detailed herein, SanDisk has monopoly power in the flash memory technology
21 market, flash memory device downstream market, flash memory systems downstream market,
22 and flash memory system products downstream market (hereinafter, collectively referred to as the
23 "Relevant Markets").

24 114. SanDisk, through the multi-layered anticompetitive licensing scheme described
25 herein, has acquired, enhanced, and/or maintained its monopoly power in the Relevant Markets in
26 violation of Section 2 of the Sherman Act.

27 115. SanDisk has coerced its competitors, including PNY, to enter into these
28 anticompetitive and uniform licenses under the threat of patent infringement litigation, or to settle

1 patent infringement claims already brought by SanDisk against them.

2 116. The overly-broad and anticompetitive restraints contained in SanDisk's licenses
3 specifically include, among other things, (a) licensing only a broad and unspecified patent
4 portfolio (instead of specific individual patents); (b) requiring royalties to be paid on worldwide
5 sales, as opposed to only on products manufactured and sold in countries where SanDisk has
6 patent rights; (c) requiring competitors to pay multiple royalties on the same patented technology
7 after patent coverage has been exhausted as that technology is resold downstream in each of the
8 Relevant Markets; and (d) requiring licensees to grant back to SanDisk their future technological
9 innovations on a worldwide royalty-free basis.

10 117. SanDisk's anticompetitive licensing scheme has given it the power to control
11 prices and exclude competition from the Relevant Markets, as evidenced by SanDisk's actual
12 exercise of control over prices and the actual exclusion of competition in the Relevant Markets.

13 118. Upon information and belief, there are high barriers to entry in each of the
14 Relevant Markets that would prevent new competition from entering the Relevant Markets for at
15 least two or more years at a level sufficient to deter or counteract SanDisk's exercise of its
16 monopoly power in the Relevant Markets.

17 119. As to each of the Relevant Markets, SanDisk's willful and wrongful acquisition,
18 maintenance, and/or extension of its monopoly power is not the result of growth and development
19 as a consequence of business acumen, or historical accident, or by virtue of offering a superior
20 product or service, greater efficiency, or lower prices, but rather is the direct consequence of
21 SanDisk's intentional exclusionary and predatory conduct in connection with its anticompetitive
22 licensing scheme.

23 120. There is no efficiency-enhancing procompetitive business justification for
24 SanDisk's unfair, predatory, and anticompetitive licensing scheme.

25 121. SanDisk's anticompetitive licensing scheme has injured (and unless enjoined, will
26 continue to injure) consumers in the Relevant Markets through increased prices, decreased
27 choice, reduced innovation, and other anticompetitive effects, including raising additional barriers
28 to entry in the Relevant Markets.

122. SanDisk's anticompetitive licensing scheme has caused and threatens to continue to cause loss and antitrust injury to PNY, other competitors of SanDisk, competition, and consumers. Unless this Court declares SanDisk's licensing scheme illegal, PNY, other competitors of SanDisk, competition, and consumers will continue to incur substantial injury and loss as a direct result of SanDisk's anticompetitive conduct.

123. The injuries to PNY, other competitors of SanDisk, competition, and consumers described herein are the types of injuries the antitrust laws were intended to prevent because they are a direct result of SanDisk's anticompetitive licensing scheme, which occurred in the United States, and has a substantial effect on competition in the Relevant Markets.

124. PNY has the requisite standing to assert antitrust claims against SanDisk because it is a participant and competitor (or potential competitor) of SanDisk in the Relevant Markets.

125. An actual, justiciable controversy appropriate for damages and declaratory relief exists between the parties.

COUNT II

(Sherman Act § 2: Attempted Monopolization)

126. PNY repeats and incorporates by reference the allegations set forth in Paragraphs 1 through 125 as if fully set forth herein.

127. Section 2 of the Sherman Act (15 U.S.C. § 2) prohibits, *inter alia*, attempts to monopolize any part of the trade or commerce among the States.

128. SanDisk has engaged in predatory and anticompetitive conduct in the Relevant Markets through its licensing scheme as detailed herein, with the deliberate and specific intent to acquire, maintain, and/or enhance its monopoly power in the Relevant Markets in violation of Section 2 of the Sherman Act. SanDisk specifically intends to eliminate, destroy, or foreclose meaningful competition in the Relevant Markets through the anticompetitive and uniform licenses described herein. SanDisk's licensing scheme is designed to exclude and thwart competition while allowing SanDisk to charge supracompetitive prices in the Relevant Markets and otherwise control the price at which products are sold in the Relevant Markets.

129. Absent action by this Court to enjoin and preclude SanDisk from continuing its

1 anticompetitive and exclusionary conduct, there is a dangerous probability that SanDisk will
2 succeed in obtaining a monopoly in (or continuing to monopolize) the Relevant Markets,
3 including the power to set prices, reduce output, or exclude competition in the Relevant Markets.

4 130. Upon information and belief, there are high barriers to entry in each of the
5 Relevant Markets that would prevent new competition from entering the Relevant Markets for at
6 least two or more years at a level sufficient to deter or counteract SanDisk's exercise of its
7 monopoly power in the Relevant Markets.

8 131. SanDisk's anticompetitive licensing scheme affects a substantial amount of
9 interstate commerce in the Relevant Markets and constitutes attempted monopolization in
10 violation of Section 2 of the Sherman Act.

11 132. SanDisk's anticompetitive licensing scheme is not motivated by technological or
12 efficiency concerns and has no valid or legitimate business justification. Instead, its purpose and
13 effect is to further preserve its monopoly position and stranglehold, and to injure consumer
14 welfare, PNY, and other competitive rivals in the Relevant Markets.

15 133. SanDisk's anticompetitive licensing scheme has injured (and unless enjoined, will
16 continue to injure) and threatens to injure consumers in the Relevant Markets through increased
17 prices, decreased choice, reduced innovation, and other anticompetitive effects, including raising
18 additional barriers to entry in the Relevant Markets.

19 134. SanDisk's anticompetitive licensing scheme has caused and threatens to continue
20 to cause loss and antitrust injury to PNY, other competitors of SanDisk, competition, and
21 consumers. Unless this Court declares SanDisk's licensing scheme illegal, PNY, other
22 competitors of SanDisk, competition, and consumers will incur (and continue to incur) substantial
23 injury and loss as a direct result of SanDisk's anticompetitive conduct.

24 135. The injuries to PNY, other competitors of SanDisk, competition, and consumers
25 described herein are the types of injuries the antitrust laws were intended to prevent because they
26 are a direct result of SanDisk anticompetitive licensing scheme, which occurred in the United
27 States, and has a substantial effect on competition in the Relevant Markets.

28 136. PNY has the requisite standing to assert antitrust claims against SanDisk because it

1 is a participant and competitor (or potential competitor) of SanDisk in the Relevant Markets.

2 137. An actual, justiciable controversy appropriate for damages and declaratory relief
3 exists between the parties.

4 COUNT III

5 **(Sherman Act § 1: Combination in Restraint of Trade)**

6 138. PNY repeats and incorporates by reference the allegations set forth in Paragraphs
7 1 through 137 as if fully set forth herein.

8 139. Section 1 of the Sherman Act (15 U.S.C. § 1) prohibits, *inter alia*, every contract,
9 combination, or conspiracy that unreasonably restrains competition to the detriment of
10 consumers.

11 140. Upon information and belief, SanDisk and certain manufacturers of flash memory
12 technology products licensed by SanDisk, including Toshiba, Samsung, and others, have entered
13 into continuing and ongoing contracts, combinations, agreements, and/or conspiracies to
14 unreasonably restrain trade and commerce in the Relevant Markets.

15 141. The agreements between SanDisk and its licensed manufacturers, in conjunction
16 with SanDisk's anticompetitive and uniform licenses, unreasonably restrain trade because they
17 raise the costs to their competitors of manufacturing and selling products in the Relevant Markets
18 and thereby reduce competition in the Relevant Markets.

19 142. The royalty structure of SanDisk's anticompetitive licensing scheme and the
20 agreements between SanDisk and its licensed manufacturers ensure that SanDisk and its licensed
21 manufacturers will have a permanent cost advantage over rivals such as PNY, and that SanDisk
22 will effectively control the price of the Relevant Products sold in each of the Relevant Markets.

23 143. The royalty structure of SanDisk's anticompetitive licensing scheme and the
24 agreements between SanDisk and its licensed manufacturers also ensure that SanDisk's
25 competitors are forced to either (a) purchase the Relevant Products from SanDisk at prices set by
26 SanDisk; (b) purchase the Relevant Products from a supplier licensed by SanDisk and pay a
27 royalty on patented technology to SanDisk in addition to the royalty the licensed supplier has
28 already paid to SanDisk on that same patented technology; (c) purchase the Relevant Products

1 from an unlicensed supplier and pay SanDisk a very high royalty; or (d) self-manufacture the
2 Relevant Products and pay SanDisk the same very high royalty on sales.

3 144. The anticompetitive effect of SanDisk's anticompetitive and uniform licenses and
4 the agreements between SanDisk and its licensed manufacturers are not offset by any
5 countervailing benefits.

6 145. The unreasonable restraint of trade created by SanDisk's anticompetitive licensing
7 scheme and the agreements between SanDisk and its licensed manufacturers, and the effects
8 thereof, continue. As a direct and proximate result of SanDisk's anticompetitive licensing
9 scheme and the agreements between SanDisk and its licensed manufacturers, and acts in
10 furtherance of each, PNY, other competitors of SanDisk, competition, and consumers have and
11 will continue to suffer antitrust injury.

12 146. An actual, justiciable controversy appropriate for damages and declaratory relief
13 exists between the parties.

14 COUNT IV

15 **(Intentional Interference With Prospective Economic Advantage and** 16 **Actual Contractual Relationships)**

17 147. PNY repeats and incorporates by reference the allegations set forth in Paragraphs 1
18 through 146 as if fully set forth herein.

19 148. This Court has jurisdiction over this cause of action based on the doctrine of
20 supplemental jurisdiction (28 U.S.C. § 1367) because this cause of action arises from the same
21 transactions and from a common nucleus of operative facts as alleged in the federal causes of
22 action contained in this Complaint.

23 149. PNY has existing and valuable business relationships, as well as reasonable
24 expectations of further and future relationships, with manufacturers, retailers, and purchasers
25 relating to flash memory technology.

26 150. SanDisk was aware of these prospective business and actual contractual
27 relationships and engaged in intentional and wrongful conduct designed or calculated to disrupt
28 and interfere with those relationships.

1 157. PNY is a "person" within the meaning of California Business & Professions Code
2 § 17201.

3 158. As alleged herein, SanDisk's conduct constitutes "unfair" business practices. A
4 practice may be deemed unfair even if not specifically proscribed by some other law. Conduct
5 that significantly threatens or harms competition, or threatens an incipient violation of an antitrust
6 law, may be deemed "unfair."

7 159. As alleged herein, SanDisk's anticompetitive conduct is also "unlawful."
8 SanDisk's violations of the federal antitrust laws, or other laws as alleged herein, satisfy the
9 "unlawful" prong of Section 17200.

10 160. By reason of, and as a direct and proximate result of, SanDisk's unfair and
11 unlawful practices and conduct, PNY has suffered and will continue to suffer financial injury to
12 its business and property.

13 161. SanDisk's unfair and unlawful conduct has caused harm to PNY, competition, and
14 consumers.

15 162. Pursuant to Section 17203, the entry of permanent and mandatory injunctive relief
16 against SanDisk is necessary to enjoin SanDisk's ongoing wrongful business conduct. An
17 injunction is needed to enable and restore competition in the market for flash memory system
18 products.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, PNY demands that judgment be entered in its favor and against SanDisk:

21 (a) declaring that SanDisk has monopolized and/or has attempted to monopolize the
22 Relevant Markets in violation of Section 2 of the Sherman Act;

23 (b) declaring that the royalty provisions and other anticompetitive terms of the license
24 entered into by SanDisk with PNY (and other competitors of SanDisk) violate Section 2 of the
25 Sherman Act and are unenforceable;

26 (c) declaring that SanDisk's conduct alleged in this Complaint is adjudged an
27 unreasonable restraint of trade in violation of Section 1 of the Sherman Act;

28 (d) ordering restitution of all sums paid as royalties by PNY to SanDisk pursuant to

1 SanDisk's anticompetitive licensing scheme;

2 (e) enjoining SanDisk from entering into licenses covering more than one jurisdiction
3 or covering jurisdictions in which SanDisk does not own patent rights;

4 (f) enjoining SanDisk from requiring its competitors to pay more than one royalty on
5 the same patented technology under 15 U.S.C. § 26 pursuant to those licenses;

6 (g) enjoining SanDisk from requiring its competitors to grant back to it royalty-free
7 worldwide licenses on all related future technological innovations made by them;

8 (h) declaring that the conduct alleged in this Complaint is adjudged to constitute
9 intentional interference with prospective economic advantage and actual contractual relationships;

10 (i) declaring that the conduct alleged in this Complaint is adjudged to be unfair and/or
11 unlawful in violation of Sections 17200 et seq. of the California Business & Professions Code;

12 (j) permanently enjoining SanDisk's unfair and/or unlawful business practices
13 pursuant to Section 17203 of the California Business & Professions Code;

14 (k) declaring the License in its entirety to be invalid, void, or unenforceable as to
15 PNY; and

16 (l) awarding PNY treble damages, reasonable attorneys' fees, costs, expenses, and
17 such further relief as the Court deems just and proper.

18
19 Dated: September 21, 2011

FARELLA BRAUN + MARTEL LLP

20
21 By: 

22 John L. Cooper

23 Attorneys for Plaintiff
24 PNY TECHNOLOGIES, INC.
25
26
27
28

1 Plaintiff PNY Technologies, Inc. ("PNY"), by and through its attorneys, Farella Braun +
2 Martel LLP and McCarter & English, LLP, files this Complaint against Defendant SanDisk
3 Corporation ("SanDisk") to secure damages and injunctive relief, and demanding trial by jury,
4 claims and alleges as follows:

5 **NATURE OF ACTION**

6 1. PNY and SanDisk are competitors in the flash memory technology market and in
7 three related downstream markets for flash memory devices, flash memory systems, and flash
8 memory system products (collectively with the flash memory technology market referred to as the
9 "Relevant Markets" or "Relevant Products"). PNY brings this action in connection with
10 SanDisk's scheme to use the specter of its patents to acquire, maintain and enhance its monopoly
11 in the Relevant Markets. SanDisk has acquired, maintained and enhanced its monopoly power in
12 the Relevant Markets by coercing its competitors to enter into anticompetitive and uniform
13 licenses under the threat of or to resolve patent infringement litigation. PNY entered into such a
14 cross-license with SanDisk under the threat of continuing patent infringement litigation.

15 2. The anticompetitive and uniform licenses force PNY and other SanDisk
16 competitors to either (a) purchase the Relevant Products from SanDisk at prices set by SanDisk;
17 (b) purchase Relevant Products from a manufacturer licensed by SanDisk and pay a royalty to
18 SanDisk in addition to the royalty the licensed manufacturer has already paid to SanDisk; (c)
19 purchase Relevant Products from an unlicensed manufacturer and pay SanDisk a very high
20 royalty; or (d) self-manufacture Relevant Products and pay SanDisk the same very high royalty
21 on sales. Through this licensing scheme uniformly applied to all of its competitors, SanDisk
22 effectively controls the price at which Relevant Products are sold (i.e., keeps it artificially high),
23 guarantees that it and its licensed manufacturers have a permanent cost advantage over
24 competitors like PNY, and takes a percentage (or all) of the revenue generated by the sale of any
25 of Relevant Products in any Relevant Markets by any individual or company in the world.

26 3. SanDisk's anticompetitive licensing scheme imposes restraints on its competitors
27 that raise their costs of doing business, obstruct entry, and lessen the incentives to innovate in the
28 Relevant Markets.

1 DEMAND FOR JURY TRIAL

2 Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff PNY Technologies, Inc.
3 hereby demands a trial by jury on all issues so triable.
4

5 Dated: September 21, 2011

FARELLA BRAUN + MARTEL LLP

6
7 By: 
8 John L. Cooper

9 Attorneys for Plaintiff
10 PNY TECHNOLOGIES, INC.
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1 4. The overly-broad and anticompetitive restraints contained in SanDisk's uniform
2 licenses specifically include, among other things, (a) licensing only a broad and unspecified
3 patent portfolio (instead of specific individual patents); (b) requiring royalties to be paid on
4 worldwide sales, as opposed to only on products manufactured and/or sold in countries where
5 SanDisk has patent rights; (c) requiring competitors to pay multiple royalties on the same product
6 as it is resold downstream in each of the Relevant Markets; and (d) requiring licensees to share
7 their future technological innovations with SanDisk on a worldwide royalty-free basis. Through
8 these terms, SanDisk has unlawfully extended and leveraged its patent monopoly to suppress and
9 eliminate competition in product and geographic markets that are not covered by its patents, and
10 has kept prices for Relevant Products artificially high in the Relevant Markets.

11 5. The tremendous demand by U.S. consumers for products incorporating flash
12 memory technology makes it critical that SanDisk not be allowed to dominate the Relevant
13 Markets by coercing its competitors into entering these anticompetitive and uniform licenses that
14 ultimately result in higher prices and less choice for all U.S. consumers of flash memory-related
15 products.

16 6. SanDisk's licensing scheme raises its rivals' costs to the point where rivals cannot
17 compete on price with SanDisk and/or its licensed manufacturers unless they are willing to forgo
18 almost all of their profit margin or sell below cost.

19 7. PNY seeks a declaration from this Court that (a) SanDisk has violated federal and
20 California antitrust laws; (b) SanDisk has engaged in unfair competition in violation of California
21 state law; (c) SanDisk has intentionally interfered with PNY's prospective economic advantage
22 and actual contractual relationships; and (d) the royalty provisions and other anticompetitive
23 terms of the uniform license entered into by SanDisk with PNY (and other competitors of
24 SanDisk) violate federal and California antitrust and/or unfair competition laws and are
25 unenforceable.

26 8. PNY also asks this Court to enjoin SanDisk under 15 U.S.C. § 26 from (a) entering
27 into licenses covering more than one jurisdiction or covering jurisdictions in which SanDisk does
28 not own patent rights; (b) requiring its competitors to pay multiple royalties on the same product

1 pursuant to those licenses; and (c) requiring its competitors to grant it worldwide royalty-free
2 licenses to all future technological innovations made by such competitors.

3 9. PNY also seeks treble damages, attorneys' fees, costs, expenses, and such further
4 relief as the Court deems just and proper in connection with SanDisk's anticompetitive licensing
5 scheme.

6 10. PNY further seeks a declaration from this Court that (a) SanDisk has intentionally
7 interfered with PNY's prospective economic advantage and actual contractual relationships; and
8 (b) SanDisk's conduct constitutes unfair competition in violation of Cal. Bus. & Prof. Code §§
9 17200 et seq. PNY also seeks damages, attorneys' fees, expenses, and costs in connection with
10 its claim for tortious interference and violation of Cal. Bus. & Prof. Code §§ 17200 et seq.

11 THE PARTIES

12 11. Plaintiff PNY Technologies, Inc. is a corporation organized and existing under the
13 laws of the State of Delaware, with its principal place of business at 299 Webro Road,
14 Parsippany, New Jersey 07054.

15 12. Defendant SanDisk Corporation is a corporation organized and existing under the
16 laws of the State of Delaware, with its principal place of business at 601 McCarthy Boulevard,
17 Milpitas, California 95035.

18 JURISDICTION AND VENUE

19 13. This Complaint is filed and this action is instituted under Sections 4 and 16 of the
20 Clayton Act (15 U.S.C. §§ 15, 26) to recover the damages caused by, and to secure injunctive and
21 declaratory relief against, SanDisk for its past and continuing violations of Sections 1 and 2 of the
22 Sherman Act (15 U.S.C. §§ 1 and 2), and Sections 2 and 3 of the Clayton Act (15 U.S.C. §§ 13
23 and 14), as alleged herein.

24 14. This Court has original and exclusive jurisdiction over the subject matter of this
25 civil action under 15 U.S.C. § 15, and 28 U.S.C. §§ 1331 and 1337. This Court may exercise
26 supplemental jurisdiction over the state law based claims pursuant to 28 U.S.C. § 1367.

27 15. This Court has personal jurisdiction over SanDisk because, upon information and
28 belief, SanDisk maintains its principal place of business, and transacts business on a systematic

1 and continuous basis, within this District, and may be found here, within the meaning of 15
2 U.S.C. §§ 15, 22 and 28 U.S.C. § 1391. Further, the unlawful acts alleged herein were performed
3 and occurred in material part within this District.

4 16. Venue is appropriate in this Court pursuant to 28 U.S.C. § 1391(b)-(c) and 28
5 U.S.C. § 1400(b) because SanDisk resides in this judicial district.

6 17. This Court may declare the rights and other legal relations of the parties pursuant
7 to 28 U.S.C. §§ 2201 and 2202 because this is a case of actual controversy within the Court's
8 jurisdiction.

9 **INTRADISTRICT ASSIGNMENT (Civil L.R. 3-5(b))**

10 18. Because this action is an Intellectual Property Action as specified in Civil L.R. 3-
11 2(c), it is to be assigned on a district-wide basis.

12 **INTERSTATE COMMERCE**

13 19. SanDisk sells its products and services across state lines.

14 20. SanDisk purchases goods and supplies in interstate commerce.

15 21. SanDisk's actions complained of herein have restrained and adversely affected
16 interstate commerce, and will continue to do so absent this Court's intervention.

17 **FACTUAL ALLEGATIONS**

18 **Flash Memory Technology**

19 22. The products at issue in this case are all part of a segment of the electronics
20 industry that is known as removable solid-state storage flash memory technology (hereinafter
21 "flash memory technology").

22 23. Flash memory is a type of non-volatile computer memory that can be electrically
23 erased and reprogrammed. Flash memory technology is used in a wide variety of products,
24 including Universal Serial Bus (USB) drives, CompactFlash (CF) cards, solid-state drives (SSD),
25 and in other applications for the general storage and transfer of data between computers and other
26 electronic devices, such as digital cameras.

27 24. A **flash memory device** consists of one or more integrated circuits. These devices
28 are commonly referred to as memory chips and are incorporated into flash memory systems.

25. A **flash memory system** includes a flash memory device and a “controller,” which acts as an interface between the device and a host (such as a computer). These systems are incorporated into flash memory system products.

26. A **flash memory system product** includes a flash memory system as well as the other housing and component parts that comprise the products that end users purchase in retail locations or on the internet. Examples of flash memory system products include a USB drive, a CF card, and an SSD.

27. In 2010, over \$1 billion of flash memory system products were sold in the United States. Such products are widely used by U.S. consumers and are considered one of the most important forms of data storage in the marketplace. In view of its current importance, flash memory technology is anticipated to remain in widespread use for many years to come.

28. The flash memory device is by far the largest part of the overall cost of a flash memory system product. The cost of the controller, circuit board, packaging, and other component parts account for only a small proportion of the overall cost of a flash memory system product.

29. Some companies manufacture only flash memory devices.

30. Other companies, including SanDisk, are “vertically integrated,” manufacturing flash memory devices, flash memory systems, and flash memory system products.

31. A third group of companies, called “aggregators,” purchase flash memory devices and/or flash memory systems, and incorporate them with other component parts to create a flash memory system product.

32. PNY is an aggregator that, among other things, sells flash memory system products through retailers to end users throughout the world.

33. Vertically-integrated manufacturers like SanDisk produce flash memory devices, flash memory systems, and flash memory system products for both their own use (e.g., SanDisk-branded products) and for sale to third parties like PNY. When prices for flash memory devices and/or systems fall, aggregators like PNY can take advantage of the price drop to produce lower-cost flash memory system products.

1 **SanDisk's Dominant Presence in the Relevant Markets**

2 ***Flash Memory Technology Market***

3 34. SanDisk has a dominant presence and monopoly power in the flash memory
4 technology market, as well as in the following three downstream markets: (a) flash memory
5 devices; (b) flash memory systems (i.e., an intermediate market); and (c) flash memory system
6 products (i.e., the end-user market).

7 35. The flash memory technology market includes the technology needed to
8 manufacture, import, and sell flash memory devices, systems, and products in the United States.

9 36. SanDisk has monopoly power in the flash memory technology market. SanDisk
10 claims to own more than 1,400 United States patents related to flash memory technology, which
11 SanDisk claims cover all feasible flash memory technologies in the United States. In other
12 words, SanDisk claims that it has a one hundred percent (100%) share of the market for flash
13 memory technology in the United States.

14 37. SanDisk also exerts control over the flash memory technology market
15 surreptitiously through partnerships and joint ventures. For example, PNY and a number of other
16 entities were recently sued for alleged patent infringement relating to SSD by a SanDisk-related
17 company. *Solid State Storage Solutions, Inc. v. Stec, Inc. et al.*, Civil Action No. 2:11-cv-391
18 (E.D. Tex.). According to the corporate disclosure statement filed by plaintiff Solid State Storage
19 Solutions, Inc. ("S4"), SanDisk owns more than 10% of the stock in S4. S4 claims to be the
20 owner of all rights, title, and interest in and to the patents-in-suit in the S4 case. However,
21 SanDisk's ownership interest in S4 demonstrates that SanDisk has a stake in patents related to
22 flash memory technology other than those patents listing SanDisk as the owner of record.

23 38. SanDisk's monopoly power in the flash memory technology market gives SanDisk
24 the ability to exclude competition, obstruct entry, raise prices, restrict output, and restrict
25 innovation in the downstream applications of flash memory technology – namely, the use of that
26 technology in flash memory systems and flash memory system products.

27 39. The relevant geographic market for flash memory technology is the United States
28 because, by definition, United States patents extend patent protection only to the geographic

1 United States.

2 40. Currently, there are no closely suitable technologies to which a manufacturer of
3 flash memory system products could switch in the event of a price increase for the patents
4 SanDisk claims cover all forms of flash memory technology.

5 ***Flash Memory Device and System Downstream Markets***

6 41. The flash memory device and system markets include the manufacture and sale of
7 flash memory devices that are developed from flash memory technology for incorporation into
8 flash memory systems, which, in turn, are used in a wide variety of flash memory system
9 products (i.e., consumer applications including USB flash drives, CF cards, and SSDs). Flash
10 memory devices and systems are also used in medical, military, automotive, gaming, and
11 industrial applications, such as in networking and communications products, security systems,
12 medical devices, and retail management products.

13 42. SanDisk has a monopolistic grip over the flash memory device and system
14 downstream markets. For example, upon information and belief, SanDisk-branded flash memory
15 system products accounted for more than 40% of retail sales of flash memory system products in
16 the United States in 2010. But, upon information and belief, SanDisk's share in the market for
17 these and other flash memory system products is even higher because SanDisk either sells
18 directly or collects a royalty on the purchase and sale of components (flash memory devices and
19 systems) by its licensed manufacturers to companies like PNY, and a second royalty for purchase
20 and sale of the same components from aggregators such as PNY who purchase and integrate the
21 components into flash memory system products that are eventually sold to consumers.
22 Accordingly, SanDisk's anticompetitive licensing scheme allows it to surreptitiously collect a
23 percentage of every sale made by its licensed manufacturers as well as a percentage of every sale
24 made by its competitors, in addition to the revenue it derives from SanDisk-branded flash
25 memory system products.

26 43. This effectively creates a situation where SanDisk is either receiving a royalty (and
27 sometimes a double or triple royalty) or direct sales revenue from each and every sale of a flash
28 memory system product to any individual or businesses in the world.